

109TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT  
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UNITED STATES AND INDIA NUCLEAR COOPERATION  
PROMOTION ACT OF 2006

—————  
JULY 21, 2006.—Ordered to be printed  
—————

Mr. HYDE, from the Committee on International Relations,  
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 5682]

[Including cost estimate of the Congressional Budget Office]

The Committee on International Relations, to whom was referred the bill (H.R. 5682) to exempt from certain requirements of the Atomic Energy Act of 1954 a proposed nuclear agreement for cooperation with India, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:  
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “United States and India Nuclear Cooperation Promotion Act of 2006”.

SEC. 2. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) preventing the proliferation of nuclear weapons, other weapons of mass destruction, the means to produce them, and the means to deliver them are critical objectives for United States foreign policy;

(2) sustaining the NPT and strengthening its implementation, particularly its verification and compliance, is the keystone of United States nonproliferation policy;

(3) the NPT has been a significant success in preventing the acquisition of nuclear weapons capabilities and maintaining a stable international security situation;

(4) countries that have never become a party to the NPT and remain outside that treaty’s legal regime pose a potential challenge to the achievement of the overall goals of global nonproliferation, because those countries have not undertaken the NPT’s international obligation to prohibit the spread of dangerous nuclear technologies;

(5) it is in the interest of the United States to the fullest extent possible to ensure that those countries that are not NPT members are responsible with any nuclear technology they develop;

(6) it may be in the interest of the United States to enter into an agreement for nuclear cooperation as set forth in section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) with a country that has never been an NPT member with respect to civilian nuclear technology if—

(A) the country has demonstrated responsible behavior with respect to the nonproliferation of technology related to weapons of mass destruction programs and the means to deliver them;

(B) the country has a functioning and uninterrupted democratic system of government, has a foreign policy that is congruent to that of the United States, and is working with the United States in key foreign policy initiatives related to non-proliferation;

(C) such cooperation induces the country to implement the highest possible protections against the proliferation of technology related to weapons of mass destruction programs and the means to deliver them, and to refrain from actions that would further the development of its nuclear weapons program; and

(D) such cooperation will induce the country to give greater political and material support to the achievement of United States global and regional nonproliferation objectives, especially with respect to dissuading, isolating, and, if necessary, sanctioning and containing states that sponsor terrorism and terrorist groups, that are seeking to acquire a nuclear weapons capability or other weapons of mass destruction capability and the means to deliver such weapons; and

(7)(A) India meets the criteria described in this subsection; and

(B) it is in the national security interest of the United States to deepen its relationship with India across a full range of issues, including peaceful nuclear cooperation.

SEC. 3. STATEMENTS OF POLICY.

(a) IN GENERAL.—The following shall be the policies of the United States:

(1) Oppose the development of a capability to produce nuclear weapons by any non-nuclear weapon state, within or outside of the Treaty on the Non-Proliferation of Nuclear Weapons (21 UST 483; commonly referred to as the “Nuclear Non-Proliferation Treaty” or the “NPT”).

(2) Encourage states party to the NPT to interpret the right to “develop research, production and use of nuclear energy for peaceful purposes”, as described in Article IV of the NPT, as being a qualified right that is conditioned by the overall purpose of the NPT to prevent the spread of nuclear weapons and

nuclear weapons capability, including by refraining from all nuclear cooperation with any state party that has not demonstrated that it is in full compliance with its NPT obligations, as determined by the IAEA.

(3) Strengthen the Nuclear Suppliers Group guidelines concerning consultation by members regarding violations of supplier and recipient understandings by instituting the practice of a timely and coordinated response by NSG members to all such violations, including termination of nuclear transfers to an involved recipient, that discourages individual NSG members from continuing cooperation with such recipient until such time as a consensus regarding a coordinated response has been achieved.

(b) WITH RESPECT TO SOUTH ASIA.—The following shall be the policies of the United States with respect to South Asia:

(1) Achieve a moratorium on the production of fissile material for nuclear explosive purposes by India, Pakistan, and the People's Republic of China at the earliest possible date.

(2) Achieve, at the earliest possible date, the conclusion and implementation of a treaty banning the production of fissile material for nuclear weapons to which both the United States and India become parties.

(3) Secure India's—

(A) full participation in the Proliferation Security Initiative;

(B) formal commitment to the Statement of Interdiction Principles;

(C) public announcement of its decision to conform its export control laws, regulations, and policies with the Australia Group and with the Guidelines, Procedures, Criteria, and Control Lists of the Wassenaar Arrangement;

(D) demonstration of satisfactory progress toward implementing the decision described in subparagraph (C); and

(E) ratification of or accession to the Convention on Supplementary Compensation for Nuclear Damage, done at Vienna on September 12, 1997.

(4) Secure India's full and active participation in United States efforts to dissuade, isolate, and, if necessary, sanction and contain Iran for its efforts to acquire weapons of mass destruction, including a nuclear weapons capability (including the capability to enrich or process nuclear materials), and the means to deliver weapons of mass destruction.

(5) Seek to halt the increase of nuclear weapon arsenals in South Asia, and to promote their reduction and eventual elimination.

(6) To ensure that spent fuel generated in India's civilian nuclear power reactors is not transferred to the United States except pursuant to the Congressional review procedures required under section 131 f. of the Atomic Energy Act of 1954 (42 U.S.C. 2160 f.).

(7) Pending implementation of a multilateral moratorium, encourage India not to increase its production of fissile material at unsafeguarded nuclear facilities.

#### SEC. 4. WAIVER AUTHORITY AND CONGRESSIONAL APPROVAL.

(a) IN GENERAL.—Notwithstanding any other provision of law, if the President makes the determination described in subsection (b), the President may—

(1) exempt a proposed agreement for nuclear cooperation with India (arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153)) from the requirement in section 123 a.(2) of such Act, and such agreement for cooperation may only enter into force in accordance with subsections (f) and (g);

(2) waive the application of section 128 of the Atomic Energy Act of 1954 (42 U.S.C. 2157) with respect to India, provided that such waiver shall cease to be effective if the President determines that India has engaged in any activity described section 129 of such Act (42 U.S.C. 2158), other than section 129 a.(1)(D) or section 129 a.(2)(C) of such Act, at any time after the date of the enactment of this Act; and

(3) with respect to India—

(A) waive the restrictions of section 129 a.(1)(A) of the Atomic Energy Act of 1954 (42 U.S.C. 2158 a.(1)(A)) for any activity that occurred on or before July 18, 2005; and

(B) section 129 a.(1)(D) of such Act.

(b) DETERMINATION BY THE PRESIDENT.—The determination referred to in subsection (a) is a determination by the President that the following actions have occurred:

(1) India has provided the United States and the International Atomic Energy Agency with a credible plan to separate civil and military nuclear facilities,

materials, and programs, and has filed a declaration regarding its civil facilities with the IAEA.

(2) India and the IAEA have concluded an agreement requiring the application of IAEA safeguards in perpetuity in accordance with IAEA standards, principles, and practices (including IAEA Board of Governors Document GOV/1621 (1973)) to India's civil nuclear facilities, materials, and programs as declared in the plan described in paragraph (1), including materials used in or produced through the use of India's civil nuclear facilities.

(3) India and the IAEA are making substantial progress toward concluding an Additional Protocol consistent with IAEA principles, practices, and policies that would apply to India's civil nuclear program.

(4) India is working actively with the United States for the early conclusion of a multilateral Fissile Material Cutoff Treaty.

(5) India is working with and supporting United States and international efforts to prevent the spread of enrichment and reprocessing technology.

(6) India is taking the necessary steps to secure nuclear and other sensitive materials and technology, including through—

(A) the enactment and enforcement of comprehensive export control legislation and regulations;

(B) harmonization of its export control laws, regulations, policies, and practices with the policies and practices of the Missile Technology Control Regime and the Nuclear Suppliers Group; and

(C) adherence to the MTCR and the NSG in accordance with the procedures of those regimes for unilateral adherence.

(7) The NSG has decided by consensus to permit supply to India of nuclear items covered by the guidelines of the NSG and such decision does not permit civil nuclear commerce with any other non-nuclear weapon state that does not have IAEA safeguards on all nuclear materials within its territory, under its jurisdiction, or carried out under its control anywhere.

(c) SUBMISSION TO CONGRESS.—

(1) IN GENERAL.—The President shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate information concerning any determination made pursuant to subsection (b), together with a report detailing the basis for the determination.

(2) INFORMATION TO BE INCLUDED.—To the fullest extent available to the United States, the information referred to in paragraph (1) shall include the following:

(A) A summary of the plan provided by India to the United States and the IAEA to separate India's civil and military nuclear facilities, materials, and programs, and the declaration made by India to the IAEA identifying India's civil facilities to be placed under IAEA safeguards, including an analysis of the credibility of such plan and declaration, together with copies of the plan and declaration.

(B) A summary of the agreement that has been entered into between India and the IAEA requiring the application of safeguards in accordance with IAEA practices to India's civil nuclear facilities as declared in the plan described in subparagraph (A), together with a copy of the agreement, and a description of the progress toward its full implementation.

(C) A summary of the progress made toward conclusion and implementation of an Additional Protocol between India and the IAEA, including a description of the scope of such Additional Protocol.

(D) A description of the steps that India is taking to work with the United States for the conclusion of a multilateral treaty banning the production of fissile material for nuclear weapons, including a description of the steps that the United States has taken and will take to encourage India to identify and declare a date by which India would be willing to stop production of fissile material for nuclear weapons unilaterally or pursuant to a multilateral moratorium or treaty.

(E) A description of the steps India is taking to prevent the spread of nuclear-related technology, including enrichment and reprocessing technology or materials that can be used to acquire a nuclear weapons technology, as well as the support that India is providing to the United States to further United States objectives to restrict the spread of such technology.

(F) A description of the steps that India is taking to secure materials and technology applicable for the development, acquisition, or manufacture of weapons of mass destruction and the means to deliver such weapons through the application of comprehensive export control legislation and regulations, and through harmonization and adherence to Missile Technology

Control Regime, the Nuclear Suppliers Group, the Australia Group, Wassenaar guidelines, and United Nations Security Council Resolution 1540, and participation in the Proliferation Security Initiative.

(G) A description of the decision taken within the Nuclear Suppliers Group relating to nuclear cooperation with India, including whether nuclear cooperation by the United States under an agreement for cooperation arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) is consistent with the decision, practices, and policies of the NSG.

(H) A description of the scope of peaceful cooperation envisioned by the United States and India that will be implemented under the Agreement for Nuclear Cooperation, including whether such cooperation will include the provision of enrichment and reprocessing technology.

(I) A description of the steps taken to ensure that proposed United States civil nuclear assistance to India will not directly, or in any other way, assist India's nuclear weapons program, including—

(i) the use of any United States equipment, technology, or nuclear material by India in an unsafeguarded nuclear facility or nuclear-weapons related complex;

(ii) the replication and subsequent use of any United States technology in an unsafeguarded nuclear facility or unsafeguarded nuclear weapons-related complex, or for any activity related to the research, development, testing, or manufacture of nuclear explosive devices; and

(iii) the provision of nuclear fuel in such a manner as to facilitate the increased production of highly-enriched uranium or plutonium in unsafeguarded nuclear facilities.

(d) RESTRICTIONS ON NUCLEAR TRANSFERS TO INDIA.—

(1) IN GENERAL.—Pursuant to the obligations of the United States under Article I of the NPT, nothing in this Act, or any agreement pursuant to this Act, shall be interpreted as permitting any civil nuclear cooperation between the United States and India that would in any way assist, encourage, or induce India to manufacture or otherwise acquire nuclear weapons or nuclear explosive devices.

(2) NSG TRANSFER GUIDELINES.—Notwithstanding the entry into force of an agreement for cooperation with India pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) and approved pursuant to this Act, no item subject to such agreement or subject to the transfer guidelines of the NSG may be transferred to India if such transfer would violate the transfer guidelines of the NSG as in effect on the date of the transfer.

(3) TERMINATION OF NUCLEAR TRANSFERS TO INDIA.—Notwithstanding the entry into force of an agreement for nuclear cooperation with India (arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153)), exports of nuclear and nuclear-related material, equipment, or technology to India shall be terminated if India makes any materially significant transfer of—

(A) nuclear or nuclear-related material, equipment, or technology that does not conform to NSG guidelines, or

(B) ballistic missiles or missile-related equipment or technology that does not conform to MTCR guidelines,

unless the President determines that cessation of such exports would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security.

(4) PROHIBITION ON NUCLEAR TRANSFERS TO INDIA.—If nuclear transfers to India are restricted pursuant to this Act, the Atomic Energy Act of 1954, or the Arms Export Control Act, the President should seek to prevent the transfer to India of nuclear equipment, materials, or technology from other participating governments in the NSG or from any other source.

(e) APPROVAL OF AGREEMENT FOR NUCLEAR COOPERATION REQUIRED.—

(1) IN GENERAL.—Subject to subsection (m), an agreement for nuclear cooperation between the United States and India submitted pursuant to this section may become effective only if—

(A) the President submits to Congress the agreement concluded between the United States and India, including a copy of the safeguards agreement entered into between the IAEA and India relating to India's declared civilian nuclear facilities, in accordance with the requirements and procedures of section 123 of the Atomic Energy Act of 1954 (other than section 123 a.(2) of such Act) that are otherwise not inconsistent with the provisions of this Act; and

(B) after the submission under subparagraph (A), the agreement is approved by a joint resolution that is enacted into law.

(2) CONSULTATION.—Beginning one month after the date of the enactment of this Act and every month thereafter until the President submits to Congress the agreement referred to in paragraph (1), the President should consult with the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate regarding the status of the negotiations between the United States and India with respect to civilian nuclear cooperation and between the IAEA and India with respect to the safeguards agreement described in subsection (b)(2).

(f) JOINT RESOLUTION.—For purposes of this section, a joint resolution referred to in subsection (e)(1)(B) is a joint resolution of the two Houses of Congress—

(1) the matter after the resolving clause of which is as follows: “That the Congress hereby approves the Agreement for Nuclear Cooperation Between the United States of America and the Republic of India submitted by the President on \_\_\_\_\_”, with the blank space being filled with the appropriate date;

(2) which does not have a preamble; and

(3) the title of which is as follows: “Joint Resolution Approving an Agreement for Nuclear Cooperation Between the United States and India”.

(g) INTRODUCTION AND REFERRAL.—

(1) INTRODUCTION.—A joint resolution shall, on the day on which the submissions under subsection (e)(1)(A) are made (or, if either House of Congress is not in session on that day, the first day thereafter when that House is in session)—

(A) be introduced in the House of Representatives by the majority leader, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and

(B) be introduced in the Senate by the majority leader, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate.

If either House of Congress is not in session on that day, the joint resolution shall be introduced on the first day thereafter when both Houses are in session.

(2) REFERRAL.—The joint resolution shall be referred to the Committee on International Relations of the House of Representatives and to the Committee on Foreign Relations of the Senate.

(h) DISCHARGE OF COMMITTEES.—If a committee to which a joint resolution is referred has not reported such joint resolution by the end of 60 days beginning on the date of its introduction, or the date of the submission of the nonproliferation assessment statement described in section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153), whichever is later, such committee shall be discharged from further consideration of such joint resolution, and such joint resolution shall be placed on the appropriate calendar of the House involved.

(i) FLOOR CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—

(1) IN GENERAL.—On or after the third calendar day (excluding Saturdays, Sundays, or legal holidays, except when the House of Representatives is in session on such a day) after the date on which the committee to which a joint resolution is referred has reported, or has been discharged from further consideration of, such a joint resolution, it shall be in order for any Member of the House to move to proceed to the consideration of the joint resolution. A Member of the House may make the motion only on the day after the calendar day on which the Member announces to the House the Member’s intention to do so. Such motion shall be privileged and shall not be debatable. The motion shall not be subject to amendment or to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the House shall immediately proceed to consideration of the joint resolution which shall remain the unfinished business until disposed of.

(2) DEBATE.—Debate on a joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than six hours, which shall be divided equally between those favoring and those opposing the joint resolution. An amendment to the joint resolution shall not be in order. A motion to further limit debate shall be in order and shall not be debatable. A motion to table, a motion to postpone, or a motion to recommit the joint resolution shall not be in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to shall not be in order.

(3) APPEALS.—Appeals from the decisions of the Chair to the procedure relating to a joint resolution shall be decided without debate.

(j) FLOOR CONSIDERATION IN THE SENATE.—Any joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

(k) CONSIDERATION BY THE OTHER HOUSE.—If, before the passage by one House of a joint resolution of that House, that House receives a joint resolution from the other House, then the following procedures shall apply:

(1) The joint resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in paragraph (2)(B).

(2) With respect to a joint resolution of the House receiving the joint resolution—

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(B) the vote on final passage shall be on the joint resolution of the other House.

(3) Upon disposition of the joint resolution received from the other House, it shall no longer be in order to consider the joint resolution that originated in the receiving House.

(l) COMPUTATION OF DAYS.—In the computation of the period of 60 days referred to in subsection (h), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

(m) SECTION 123 OF ATOMIC ENERGY ACT OF 1954 NOT AFFECTED.—Notwithstanding subsection (e)(1), this section does not preclude the approval, under section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153), of an agreement for cooperation in which India is the cooperating party.

(n) SUNSET.—The procedures under this section shall cease to be effective upon the enactment of a joint resolution under this section.

(o) REPORTS.—

(1) POLICY OBJECTIVES.—The President shall, not later than January 31, 2007, and not later than January 31 of each year thereafter, submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report on—

(A) the extent to which each policy objective in section 3(b) has been achieved;

(B) the steps taken by the United States and India in the preceding calendar year to accomplish those objectives;

(C) the extent of cooperation by other countries in achieving those objectives; and

(D) the steps the United States will take in the current calendar year to accomplish those objectives.

(2) NUCLEAR EXPORTS TO INDIA.—

(A) IN GENERAL.—Not later than one year after the date on which an agreement for nuclear cooperation between the United States and India is approved by Congress under section 4(f) and every year thereafter, the President shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report describing United States exports to India for the preceding year pursuant to such agreement and the anticipated exports to India for the next year pursuant to such agreement.

(B) NUCLEAR FUEL.—The report described in subparagraph (A) shall also include (in a classified form if necessary)—

(i) an estimate for the previous year of the amount of uranium mined in India;

(ii) the amount of such uranium that has likely been used or allocated for the production of nuclear explosive devices;

(iii) the rate of production of—

(I) fissile material for nuclear explosive devices; and

(II) nuclear explosive devices; and

(iv) an analysis as to whether imported uranium has affected such rate of production of nuclear explosive devices.

(C) UNSAFEGUARDED NUCLEAR FACILITIES.—The report described in subparagraph (A) shall also include (in a classified form if necessary) a description of whether United States civil nuclear assistance to India is directly, or in any other way, assisting India's nuclear weapons program, including—

(i) the use of any United States equipment, technology, or nuclear material by India in an unsafeguarded nuclear facility or nuclear-weapons related complex;

(ii) the replication and subsequent use of any United States technology in an unsafeguarded nuclear facility or unsafeguarded nuclear weapons-related complex, or for any activity related to the research, development, testing, or manufacture of nuclear explosive devices; and

(iii) the provision of nuclear fuel in such a manner as to facilitate the increased production of highly-enriched uranium or plutonium in unsafeguarded nuclear facilities.

(3) NEW NUCLEAR REACTORS OR FACILITIES.—Not later than one year after the date of the enactment of this Act and annually thereafter, the President shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report describing any new nuclear reactors or nuclear facilities that the Government of India has designated as civilian and placed under inspections or has designated as military.

(4) DISPOSAL OF SPENT NUCLEAR FUEL.—Not later than one year after the date on which an agreement for nuclear cooperation between the United States and India is approved by Congress under section 4(f) and every year thereafter, the President shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report describing the disposal of spent nuclear fuel from India's civilian nuclear program.

(p) DEFINITIONS.—In this Act:

(1) IAEA.—The term “IAEA” means the International Atomic Energy Agency.

(2) MTCR.—The term “MTCR” means the Missile Technology Control Regime.

(3) NPT.—The term “NPT” means the Treaty on the Non-Proliferation of Nuclear Weapons.

(4) NPT MEMBER.—The term “NPT member” means a country that is a party to the NPT.

(5) NSG.—The term “NSG” means the Nuclear Suppliers Group.

#### PURPOSE AND SUMMARY

H.R. 5682, the United States and India Nuclear Cooperation Promotion Act of 2006, would exempt a future peaceful nuclear cooperation agreement with India from current statutory restrictions in the Atomic Energy Act of 1954 (AEA), as amended, that would otherwise not permit the export of nuclear items and materials to India. Such restrictions normally apply on such agreements with states (other than “Nuclear Weapon States” such as the United Kingdom, France, China and Russia as recognized by the Treaty on the Nonproliferation of Nuclear Weapons, or NPT) that do not have comprehensive international nuclear safeguards, that have ongoing nuclear weapons programs, or that have tested nuclear weapons since 1978. A peaceful nuclear cooperation agreement with India would be inconsistent with these restrictions.

H.R. 5682 requires that, in order to waive the requirements in the AEA, the President must certify that India has fulfilled the commitments it undertook on July 18, 2005 in the U.S.-India Joint Statement to (among other activities) expand peaceful nuclear trade. These commitments included providing a credible plan to separate its civilian and military nuclear facilities, concluding a safeguards agreement with the International Atomic Energy Agency (IAEA), continuing its moratorium on nuclear tests, and working actively with the United States to prevent the spread of nuclear enrichment and reprocessing technology to other countries, among other measures. In addition, the President must certify that the Nuclear Suppliers Group (NSG) has agreed by consensus to modify its guidelines to permit civil nuclear trade with India, which would otherwise be precluded for its 45 member-states.

Once the President certifies that these conditions have been met, he may exercise the waiver authorities provided in the bill and present the negotiated agreement to Congress for approval. In order for U.S.-India nuclear cooperation to begin, however, the negotiated agreement must be approved by a subsequent joint resolution adopted by both the House and Senate. The text of the safeguards agreement between India and the International Atomic Energy Agency must also be submitted to inform Congressional review of the U.S.-India agreement, which will rely upon the IAEA safeguards to alert the U.S. to any diversion of U.S.-provided nuclear material from peaceful to military purposes. Finally, H.R. 5682 provides for enhanced Congressional oversight of nuclear cooperation with India by requiring annual reports on U.S. non-proliferation policy in South Asia and the implementation of the U.S.-India Nuclear Cooperation Agreement.

#### BACKGROUND AND NEED FOR THE LEGISLATION

Relations between India and the United States have been marred for decades by coolness and distrust, punctuated by occasional hostility. With the receding of the Cold War's global divisions and the new realities of globalization and trans-national terrorism, for more than a decade there has been increasing recognition in both countries of the significant benefits to be obtained from closer cooperation across a broad spectrum. These range from shared strategic interests, such as enhanced stability and security in South Asia and the international system as a whole, to more specific priorities, including greater effectiveness in combating the AIDS epidemic, combating terrorism around the world, and preventing the proliferation of weapons of mass destruction, among others.

To that end, on July 18, 2005, President Bush and Indian Prime Minister Manmohan Singh issued a joint statement announcing a "global partnership" between the two countries that embraces cooperation across a wide range of subjects. As part of that announcement, President Bush stated that he would "work to achieve full civil nuclear energy cooperation with India" and would "also seek agreement from Congress to adjust U.S. laws and policies."

The Administration's proposed legislation, H.R. 4974, subsequently reintroduced with modifications as H.R. 5682, would provide the Administration with authority to waive the relevant provisions of the AEA. Three provisions of the Atomic Energy Act (42 U.S.C. 2153 et seq) contain restrictions on cooperation that the Administration deemed to be insurmountable hurdles in conducting civil nuclear cooperation with India: Section 123 a.(2), which requires that a non-nuclear weapon state have IAEA safeguards on all nuclear material in all peaceful nuclear activities in that state (commonly referred to as "full-scope safeguards") as a condition of approval for new cooperation agreements; Section 128, which requires a non-nuclear weapon state recipient of U.S. nuclear exports to have full-scope safeguards as a prerequisite for licensing U.S. exports; and Section 129, which requires ending exports if a non-nuclear weapon state has tested nuclear weapons after 1978.

The Atomic Energy Act contains provisions for the President to waive the full-scope safeguards requirement for a new cooperation agreement, but would require submitting the agreement to the Congress as "exempt," with a determination that including the re-

quirements would be “seriously prejudicial to the achievement of U.S. nonproliferation objectives or otherwise jeopardize the common defense and security.” Such an exempted agreement could only enter into force with the enactment of a joint resolution of approval of the House and the Senate.

The Atomic Energy Act also contains a provision for the President to override a decision by the Congress to halt exports under the export review provision in Section 128, requiring the President to determine that foreign policy interests dictate reconsideration. In addition, the Atomic Energy Act would allow the President to waive termination of exports under Section 129, pending a determination that cessation would be “seriously prejudicial to the achievement of U.S. nonproliferation objectives or otherwise jeopardize the common defense and security.” Rather than use the waivers existing already under the Atomic Energy Act, the Administration requested separate waiver authority in H.R. 4974.

The Administration’s proposal in H.R. 4974 sought to replace the procedure in existing statute for approving agreements that did not meet all the statutory requirements—a joint resolution of approval—with routine consideration for agreements that do meet the requirements. The Committee rejected this approach in favor of retaining existing Congressional prerogatives in the Atomic Energy Act.

H.R. 5682 reflects broad agreement among Committee members that peaceful nuclear cooperation with India can serve multiple U.S. foreign policy and national security objectives, but must be approached in a manner that minimizes potential risks to the nonproliferation regime. Among the most important considerations are ensuring that NSG guidelines and consensus decision-making are upheld, and that a U.S. nuclear cooperation agreement and subsequent U.S. nuclear exports are consistent with the decisions, policies, and guidelines of the NSG.

The bill requires, as a condition for the President to exercise his waiver authority, that the NSG agree by consensus to an exception specifically for India to its guidelines and that no U.S. exports may be transferred to India that do not comport with NSG guidelines and decisions. Equally important is the need to ensure that U.S. cooperation does not assist the Indian nuclear weapons program, directly or indirectly, in order to avoid contributing to a nuclear arms race in South Asia and because of U.S. obligations under the NPT.

As in the Administration’s proposed legislation, H.R. 5682 requires the President to determine that India is upholding its July 18, 2005 commitments as a prerequisite for using his waiver authority. But the Committee also believes that India’s continued implementation of those commitments is vital to the health of our bilateral relationship. Therefore, the bill contains reporting requirements and a provision that calls for termination of exports in the event of violations of certain commitments. Lastly, the bill seeks to uphold existing statutory Congressional oversight of U.S. nuclear cooperation and exports. At a time when the world appears to be considering nuclear energy as a viable and desirable alternative to carbon-based energy sources, oversight of its expansion is crucial.

## HEARINGS

The Full Committee held 5 days of hearings related to this legislation: September 8, 2005; October 26, 2005; November 16, 2005; April 5, 2006; and May 11, 2006. Testimony was received from 18 witnesses, including two Members of Congress, and representatives from 14 organizations.

## COMMITTEE CONSIDERATION

On June 28, 2006, the Committee met in open session and ordered favorably reported the bill, H.R. 5682, as amended, by a vote of 37 to 5, a quorum being present.

## VOTES OF THE COMMITTEE

Clause (3)(b) of rule XIII of the Rules of the House of Representatives requires that the results of each record vote on an amendment or motion to report, together with the names of those voting for or against, be printed in the Committee Report.

1) *To report favorably, as amended—agreed to by a vote of 37–5*

Voting yes: Hyde, Gallegly, Ros-Lehtinen, Rohrabacher, Royce, Chabot, Tancredo, Flake, Green, Weller, Pence, McCotter, Harris, Wilson, Boozman, Barrett, Mack, Fortenberry, McCaul, Lantos, Berman, Ackerman, Faleomavaega, Brown, Sherman, Wexler, Delahunt, Meeks, Crowley, Berkley, Napolitano, Schiff, Smith (WA), McCollum, Chandler, Cardoza, and Carnahan.

Voting no: Leach, Smith (NJ), Poe, Lee, and Watson.

2) *Berman amendment—to add new subsection 4(b)(8)—India (regarding fissile material)—defeated by a vote of 13–32*

Voting yes: Leach, Smith (NJ), Berman, Brown, Sherman, Delahunt, Lee, Blumenauer, Napolitano, Schiff, Watson, McCollum, and Chandler.

Voting no: Hyde, Burton, Gallegly, Ros-Lehtinen, Rohrabacher, Royce, King, Chabot, Tancredo, Issa, Flake, Green, Weller, Pence, McCotter, Harris, Wilson, Barrett, Fortenberry, McCaul, Poe, Lantos, Ackerman, Faleomavaega, Wexler, Engel, Meeks, Crowley, Berkley, Smith (WA), Cardoza and Carnahan.

3) *Berman amendment—to add new subsection 4(f)—Limitation on Nuclear Transfers to India—defeated by a vote of 12–31*

Voting yes: Leach, Smith (NJ), Fortenberry, Berman, Brown, Sherman, Lee, Napolitano, Schiff, Watson, McCollum, and Chandler.

Voting no: Hyde, Burton, Gallegly, Ros-Lehtinen, Rohrabacher, Royce, King, Chabot, Tancredo, Issa, Flake, Green, Weller, Pence, McCotter, Harris, Wilson, Barrett, Mack, McCaul, Poe, Lantos, Ackerman, Faleomavaega, Engel, Meeks, Crowley, Berkley, Smith (WA), Cardoza and Carnahan.

- 4) *Sherman amendment—to add new subsection 4(b)(8) and subsection 4(p)—Annual Certification; Termination of Cooperation—defeated by a vote of 10–32*

Voting yes: Leach, Smith (NJ), Fortenberry, Berman, Sherman, Lee, Napolitano, Schiff, Watson, and McCollum.

Voting no: Hyde, Burton, Gallegly, Ros-Lehtinen, Rohrabacher, Royce, King, Chabot, Tancredo, Paul, Issa, Flake, Green, Weller, Pence, McCotter, Harris, Wilson, Barrett, McCaul, Poe, Lantos, Ackerman, Faleomavaega, Engel, Meeks, Crowley, Berkley, Smith (WA), Chandler, Cardoza and Carnahan.

- 5) *Lee amendment—to add new subsection 4(b)(8)—Requiring India to sign the NPT—defeated by a vote of 4–36*

Voting yes: Leach, Smith (NJ), Lee, and Watson.

Voting no: Hyde, Burton, Gallegly, Ros-Lehtinen, Rohrabacher, Royce, King, Chabot, Tancredo, Paul, Flake, Green, Weller, Pence, McCotter, Harris, Wilson, Barrett, Fortenberry, McCaul, Lantos, Berman, Ackerman, Faleomavaega, Sherman, Engel, Meeks, Crowley, Berkley, Napolitano, Schiff, Smith (WA), McCollum, Chandler, Cardoza and Carnahan.

- 6) *Berkley amendment—to add new subsection 4(d)(4)—Prohibition on U.S. Importation of Indian Spent Nuclear Fuel—defeated by a vote of 15–19*

Voting yes: Leach, McCotter, Ackerman, Sherman, Wexler, Delahunt, Meeks, Lee, Crowley, Berkley, Schiff, Watson, McCollum, Chandler and Carnahan.

Voting no: Hyde, Gallegly, Ros-Lehtinen, Rohrabacher, Royce, Tancredo, Flake, Green, Weller, Pence, Harris, Wilson, Boozman, Barrett, Fortenberry, McCaul, Poe, Lantos, and Faleomavaega.

- 7) *Berkley amendment—to add new subsection 3(b)(6)—Regarding spent nuclear fuel transfers to the U.S.—agreed to by a vote of 39–0*

Voting yes: Hyde, Leach, Smith (NJ), Gallegly, Ros-Lehtinen, Rohrabacher, Royce, Chabot, Tancredo, Flake, Green, Weller, Pence, McCotter, Harris, Wilson, Boozman, Barrett, Fortenberry, McCaul, Poe, Lantos, Berman, Ackerman, Faleomavaega, Sherman, Wexler, Meeks, Lee, Crowley, Berkley, Napolitano, Schiff, Watson, Smith (WA), McCollum, Chandler, Cardoza and Carnahan.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 5682, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 13, 2006.*

Hon. HENRY J. HYDE, *Chairman,*  
*Committee on International Relations,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5682, the United States and India Nuclear Cooperation Promotion Act of 2006.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sam Papenfuss, who can be reached at 226-2840.

Sincerely,

DONALD B. MARRON, *Acting Director.*

Enclosure

cc: Honorable Tom Lantos  
Ranking Member

*H.R. 5682—United States and India Nuclear Cooperation Promotion Act of 2006*

H.R. 5682 would exempt India from the current-law prohibition on the transfer of nuclear materials and technology to countries that are not signatories to the Treaty on the Non-Proliferation of Nuclear Weapons. Under this bill, the United States could transfer nuclear material and technology to India, subject to an agreement between the two countries, if the President certifies that India meets certain conditions. Those conditions would require India to:

- Provide a credible plan to separate civilian and military nuclear facilities,
- Conclude an agreement with the International Atomic Energy Agency,
- Work actively with the United States to prevent proliferation of nuclear enrichment and reprocessing technology, and
- Gain the consensus support of the Nuclear Suppliers Group, an organization of countries with nuclear capabilities, for trade in items covered by its guidelines.

Additionally, in the event an agreement is reached for nuclear cooperation between India and the United States, the bill would require the President to submit a report detailing the basis for determining that India meets all the necessary requirements. Finally,

the bill also would require that the agreement be approved by a joint resolution of the two Houses of Congress that has been enacted into law.

CBO estimates that implementing H.R. 5682 would not have a significant impact on the federal budget. H.R. 5682 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact is Sam Papenfuss, who can be reached at 226-2840. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### PERFORMANCE GOALS AND OBJECTIVES

The performance goals and objectives are to provide the President with authority to negotiate a civil nuclear cooperation agreement, to set conditions that that agreement must meet to enter into force, and to provide for an expedited approval process by Congress.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 8, Clause 18 of the Constitution.

#### SECTION-BY-SECTION ANALYSIS AND DISCUSSION

##### *Section 1. Short Title.*

Section 1 states that this Act may be cited as the “United States and India Nuclear Cooperation Promotion Act of 2006”.

##### *Section 2. Sense of Congress.*

Section 2 expresses the Sense of Congress regarding the nuclear non-proliferation regime and the principles that should guide the United States in entering into arrangements with a country that has never been a signatory to the Nuclear Non-Proliferation Treaty (NPT). Paragraph (1) states that preventing the proliferation of nuclear weapons, other weapons of mass destruction (WMD), and the means to deliver these are critical objectives for United States foreign policy. Paragraph (2) states that sustaining the NPT and strengthening its implementation is the keystone of United States non-proliferation policy. Paragraph (3) states that the NPT has been a significant success in preventing the spread of nuclear weapons capabilities to other countries and in maintaining a stable international security situation. Paragraph (4) states that countries that have never become a party to the NPT and remain outside that treaty’s legal regime pose a potential challenge to the achievement of the overall goals of global nonproliferation because those countries have not undertaken the NPT’s international obligation to prohibit the spread of dangerous nuclear technologies. Paragraph (5) states that it is in the interest of the United States to ensure to the fullest extent possible that those countries that are not signatories to the NPT act responsibly regarding any nuclear technology they develop. Paragraph (6) states that it may be in the interest of the United States to cooperate with a country that has

never signed the NPT with respect to civilian nuclear technology if that country meets certain criteria.

These criteria include demonstrating responsible behavior with respect to the nonproliferation of WMD technology and the means to deliver these weapons; the country has a functioning and uninterrupted democratic system of government, has a foreign policy that is congruent with that of the United States, and is working with the United States in key foreign policy initiatives related to non-proliferation; such cooperation induces the country to implement the highest possible protections against the proliferation of technology related to weapons of mass destruction and the means to deliver them and also to refrain from actions that would further the development of its nuclear weapons program; and that such cooperation will induce the country to give greater political and material support to the achievement of U.S. global and regional non-proliferation objectives, especially with respect to dissuading, isolating, and, if necessary, sanctioning and containing states that sponsor terrorism and terrorist groups and that are seeking to acquire a nuclear weapons capability or other WMD capability and the means to deliver such weapons.

The Committee intends that the set of principles presented in this section serve as a guide for possible future civil nuclear cooperation with any country that has never been a signatory to the NPT. This section draws upon statements made by Members of the Committee during hearings on this subject that any change in our approach to these countries should be based on such principles and not merely on strategic concerns. Cooperating with non-NPT countries that meet these criteria and that have developed a nuclear capacity could serve a number of non-proliferation goals.

For example, information acquired from these countries' nuclear policies and programs might be useful in terms of developing new avenues of research. Cooperation in this area could include, among other activities, exchanges of data concerning proliferation-resistant technologies and the safety of civilian nuclear power generation, including the handling of spent fuel. This cooperation could serve U.S. national security interests, even if it did not include restricted data or sensitive nuclear technology as defined under the Atomic Energy Act. The Committee understands that the research component of the U.S.-India civil nuclear agreement is currently under discussion and looks forward to close and timely consultation on this matter.

### *Section 3. Statements of Policy.*

Section 3 sets forth two sets of policies of the United States: those general in nature and those specific to South Asia.

Subsection (a) states that it shall be the policy of the United States to:

1. Oppose the development of a capability to produce nuclear weapons by any non-nuclear weapons state, within or outside of the Nuclear Non-Proliferation Treaty (NPT).
2. Encourage states party to the NPT to interpret the right to "develop research, production and use of nuclear energy for peaceful purposes," as described in Article IV of the NPT, as being a qualified right that is conditioned by the overall purpose of the NPT to prevent the spread of nuclear weap-

ons and nuclear weapons capability. Among other methods, this should include encouraging NPT states to refrain from all nuclear cooperation with any state party that has not demonstrated that it is in full compliance with its NPT obligations, as determined by the IAEA.

3. Strengthen the Nuclear Suppliers Group guidelines concerning consultation by members regarding violations of supplier and recipient understandings by instituting the practice of a timely and coordinated response by NSG members to all such violations, including termination of all nuclear transfers to an involved recipient, that discourages individual NSG members from continuing cooperation with such recipient until such time as a consensus regarding a coordinated response has been achieved.

Regarding the second statement relating to the NPT, the Committee believes that:

- The NPT was conceived, written, and ratified by its member countries for the specific and overriding purpose of preventing the proliferation of nuclear weapons and nuclear explosive devices, as stated in the Preamble and its first three Articles;
- all provisions of the NPT must be interpreted within the context of preventing the proliferation of nuclear weapons and nuclear explosive devices; and
- Article IV conditions a country's "inalienable right to develop research, production and use of nuclear energy for peaceful purposes without discrimination" on that country's conformity with Articles I, II, and III which obligate each signatory "not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices."

The Committee further believes that, because the processes of enriching uranium or separating plutonium for peaceful or military purposes are essentially identical, they inherently pose an enhanced risk of proliferation, even under strict international inspections. Rights under Article IV of the NPT must be properly understood and exercised only insofar as they are consistent with preventing the nonproliferation of nuclear weapons. Therefore, the U.S. cannot recognize a claim by any non-nuclear country of a right to develop or possess a complete nuclear fuel cycle if that country has not provided convincing evidence that its nuclear activities are fully safeguarded from contributing to a nuclear weapons capability.

This interpretation of Article IV of the NPT is directly relevant to current efforts by the U.S. and members of the international community to persuade Iran to end its programs to develop or acquire an autonomous capacity to enrich uranium or separate plutonium. This effort has been hindered by the logical inconsistency that they are attempting to prevent Iran from exercising an absolute right that they themselves agree Iran possesses. To eliminate this logical inconsistency and to prevent other non-nuclear signatories of the NPT from employing a similar argument to provide a cover for a covert nuclear weapons program, the U.S. should per-

suade all countries to interpret Article IV in the manner outlined above in order to ensure that the overriding purpose of the NPT of preventing the proliferation of nuclear weapons is not undermined by illogical interpretations of its provisions.

Regarding the third statement relating to the NSG, the Committee holds that the effectiveness of the NSG rests upon its consensus decision-making, resulting in unified policies of its members. Consensus decision-making ensures that all states abide by rules prohibiting exports to restricted states (such as non-nuclear weapon states outside the NPT) and by rules restricting certain kinds of exports (such as enrichment and reprocessing, which the NSG restricts according to policy, not guidelines). The Committee is mindful that a country outside the regime that seeks an exception from NSG guidelines could follow a strategy of concluding agreements with key NSG members purely to persuade them to support changing the guidelines and then later discard those agreements while continuing to import from other NSG members. A single NSG member could prevent any effort to reimpose the previous restrictions, a position that expectations of commercial reward, among others, might encourage. In this scenario, the U.S. could negotiate a deal with a country that included elaborate restrictions, only to find that those restrictions were rendered null and void once the NSG guidelines had been changed and the intended partner cast the agreement aside, turning to less demanding countries to provide it with the desired exports and to prevent the NSG from amending its guidelines. To preclude such a scenario, the Committee urges the Administration to persuade other NSG members to act in concert, both in terms of timing, scope, and content of nuclear supply to all countries, including India. In particular, the Committee intends that the U.S. act to secure agreement among NSG members that violations by one country of an agreement with any NSG member result in joint action by all, including the termination of all nuclear exports.

Subsection (b) states that, with respect to South Asia, it shall be U.S. policy to:

1. Achieve a moratorium on the production of fissile material for nuclear explosive purposes by India, Pakistan, and the People's Republic of China at the earliest possible date;
2. Achieve the conclusion and implementation of a treaty banning the production of fissile material for nuclear weapons to which both the U.S. and India become parties;
3. Secure India's full participation in the Proliferation Security Initiative (PSI), formal commitment to the PSI's Statement of Interdiction Principles, public announcement of its decision to conform its export control laws, regulations, and policies with the Australia Group and with the Guidelines, Procedures, Criteria, and Control Lists of the Wassenaar Arrangement, and demonstration of satisfactory progress regarding this decision; and ratification of or accession to the Convention on Supplementary Compensation for Nuclear Damage;
4. Secure India's full participation in U.S. efforts to dissuade, isolate, sanction, and contain Iran for its efforts to acquire WMDs, including a nuclear weapons capability and the means to deliver these;

5. Seek to halt the increase of nuclear weapons arsenals in South Asia and to promote their reduction and eventual elimination;
6. Ensure that spent fuel generated in India's civilian nuclear power reactors is not transferred to the U.S. except under procedures in the Atomic Energy Act; and
7. Encourage India not to increase its production of fissile material at unsafeguarded nuclear facilities.

The Committee believes that a U.S.-India nuclear cooperation agreement marks a turning point in the U.S.-India relationship, but this does not mean that the United States should sacrifice its long-standing objectives for non-proliferation in South Asia. This subsection clearly states that U.S. policy must be continue to support a fissile material moratorium in South Asia and a halt to the increase in nuclear arsenals in the region, among others. In particular, the Committee believes that India has a significant role to play in preventing the proliferation of dangerous nuclear technologies to other countries and believes that India must be a part of the international effort to prevent Iran from acquiring weapons of mass destruction in general and nuclear weapons in particular. The Committee will continue to review India's behavior in this regard, as well the international community's demand that Iran suspend uranium-enrichment activities and that it adhere to the international community's requirements regarding the terms of any Iranian peaceful use of nuclear energy.

An annual report by the President on the extent to which these policy objectives are being achieved is required in subsection (o).

The Committee notes that in the July 18, 2005, Joint Statement, India committed to taking on the "same responsibilities and practices and acquire the same benefits and advantages as other leading countries with advanced nuclear technology, such as the United States." It is therefore imperative that India take steps soon to halt the production of fissile material for weapons, as four of the five nuclear weapon states have declared to have done. The Committee understands that India cannot do this alone, and therefore urges the U.S. Government to pursue a moratorium by Pakistan and China as well, as well as a multilateral treaty banning the production of fissile material for nuclear weapons.

With respect to a treaty banning the production of fissile material for nuclear weapons, the Committee notes the longstanding delay of the start of negotiations on such a treaty at the Conference on Disarmament in Geneva. The Committee also notes that the Administration's draft treaty tabled in Geneva in May 2006 does not contain verification measures, while Indian officials have supported an effectively verifiable treaty

The Committee believes India's participation in the Proliferation Security Initiative, the Australia Group and the Wassenaar Arrangement will be important steps in bringing India closer to the mainstream of the nonproliferation regime. In particular, it is critical to secure India's full participation in U.S. efforts to prevent Iran from acquiring nuclear weapons, a position held by many members of the Committee that resonated in several of the hearings held in relation to this bill. Finally, the Committee heard testimony from nonproliferation experts who overwhelmingly supported the need to avoid a nuclear arms race in South Asia as well

as the need to ensure that U.S. assistance does not encourage India to increase its production of fissile material at unsafeguarded nuclear facilities. As noted below, the United States has an obligation under Article I of the NPT not to “in any way assist, encourage, or induce a non-nuclear weapon state to manufacture or otherwise acquire nuclear weapons.” As described later in this report, H.R. 5682 contains provisions that require reports related to that obligation.

*Section 4. Waiver Authority and Congressional Approval.*

Subsection (a) provides the President with authority to exempt a civil nuclear agreement with India and nuclear exports to India from certain sections of the Atomic Energy Act (AEA) that would otherwise present obstacles to approving and implementing such an agreement. Specifically, the waiver authority applies to sections 123 a.(2), 128, and 129. The authority to waive Section 128, which requires an annual review by Congress of one export license, shall cease to be effective if the President determines that India has engaged in any activity described in section 129 of that Act, other than section 129 a.(1)(D) or section 129 a.(2)(C) at any time after the date of the enactment of this Act. This means that Congressional review of exports would be reinstated in the event that the President made a finding that India had tested a nuclear device, terminated or abrogated IAEA safeguards, materially violated IAEA safeguards, materially violated an agreement of cooperation with the United States, or assisted, encouraged or induced a non-nuclear weapon state to engage in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices. In those cases, per Section 129, exports to India would likely cease anyway, but this provision would extend review to the circumstance in which the President decided to continue exports because he determined that cessation of exports would be seriously prejudicial to the achievement of U.S. nonproliferation objectives. The Committee notes that this authority does not provide in any way for the President to waive any other requirement of section 123 a. of the AEA.

In addition, this Act would allow the President to waive the restrictions of section 129 a.(1)(A) of the AEA for any activity that occurred on or before July 18, 2005, as well as section 129 a.(1)(D). This would provide authority to waive a cutoff in nuclear exports required because of President Clinton’s determination that India had tested a nuclear explosive device in 1998, while keeping in place the requirement to cut off exports should India test in the future. It would also provide waiver authority for cessation of U.S. nuclear exports to India in the event that the President determines that India has “engaged in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President’s judgment, represent sufficient progress toward terminating such activities.” India will presumably continue to produce material for its military nuclear program, consistent with its separation plan.

Subsection (b) requires the President to make the following determinations:

- 1) India has provided the United States and the International Atomic Energy Agency with a credible plan to separate civil and military nuclear facilities, materials, and programs, and has filed a declaration regarding its civil facilities with the IAEA;
- 2) India and the IAEA have concluded an agreement requiring the application of IAEA safeguards in perpetuity in accordance with IAEA standards, principles, and practices (including IAEA Board of Governors Document GOV/1621 (1973)) to India's civil nuclear facilities, materials, and programs as declared in its separation plan;
- 3) India and the IAEA are making substantial progress toward concluding an Additional Protocol consistent with IAEA principles, practices, and policies that would apply to India's civil nuclear program;
- 4) India is working actively with the U.S. for the early conclusion of a multilateral Fissile Material Cutoff Treaty;
- 5) India is working with and supporting U.S. and international efforts to prevent the spread of enrichment and reprocessing technology;
- 6) India is taking the necessary steps to secure nuclear and other sensitive materials and technology, including through the enactment and enforcement of comprehensive export control legislation and regulations, harmonization of its export control laws, regulations, policies, and practices with the policies of the Missile Technology Control Regime and the Nuclear Suppliers Group, and adherence to the MTCR and NSG in accordance with the procedures of those regimes for unilateral adherence; and
- 7) The NSG has decided by consensus to permit supply to India of nuclear items covered by the guidelines of the NSG, and such decision does not permit civil nuclear commerce with any other non-nuclear weapon state that does not have IAEA safeguards on all nuclear materials within its territory, under its jurisdiction, or carried out under its control anywhere.

The Committee has strengthened and enhanced the conditions included in the Administration's original proposal, H.R. 4974, in order to make certain that measures needed to ensure that the agreement can safely come into force are in place; e.g., a safeguards agreement negotiated with the IAEA, and that India has fulfilled key obligations it has freely undertaken in its July 18, 2005 statement and in subsequent statements. The Committee recognizes that a number of these conditions will require a considerable expenditure of effort and resources to satisfy, such as the negotiation of an Additional Protocol that must be tailored to India's unique needs, and for that reason has allowed for significant latitude regarding their completion. But the Committee believes that none of these conditions, either singly or in combination with others, is onerous. In addition, although it did not impose rigorous measurements or deadlines, the Committee intends that considerable substantive progress on the forgoing measures can be easily demonstrated, including India's cooperation with the U.S. to prevent the spread of enrichment and reprocessing technology and its taking steps to strengthen its export laws and regulations. Regarding

the NSG, the Committee intends that nothing be done in connection with this legislation or any subsequent act or policy to weaken the NSG's irreplaceable role in the global nonproliferation regime. To that end, the Committee has specified that the U.S. must continue to support the traditional practice by NSG members of taking decisions on the basis of consensus, defined as unanimous consent. This is consistent with statements by senior Administration officials.

With respect to the requirement that India provide a credible separation plan for its civilian and military nuclear facilities, the Committee strongly urges the Administration to develop a clear definition of the term "credible" and to encourage India to interpret this to mean, among other aspects, that personnel, equipment, and nuclear weapons-relevant information is not transferred between the safeguarded civilian and unsafeguarded military sectors.

Given that IAEA safeguards cannot prevent the diversion of information and technical knowledge, and that a significant portion of India's nuclear fuel cycle will remain outside of those safeguards, it is essential to ensuring that the United States meets its Article I obligation under the NPT that effective barriers are put in place to prevent the transfer of potentially useful information and personnel from the safeguarded to the unsafeguarded sector.

Subsection (c) requires the President to submit to the House International Relations Committee and the Senate Foreign Relations Committee a report regarding this determination that includes:

- 1) summaries and copies of India's separation plan and of its declaration of which of its civil nuclear facilities will be placed under IAEA safeguards, including an analysis of the credibility of the plan and declaration;
- 2) a summary of the safeguards agreement between India and the IAEA, including a copy of the agreement and a description of progress toward its full implementation;
- 3) a summary and description of the progress made toward concluding and implementing an Additional Protocol between India and the IAEA;
- 4) a description of the steps India is taking to work with the U.S. for the conclusion of a multilateral treaty banning the production of fissile material for nuclear weapons, including a description of the steps the U.S. has taken and will take to encourage India to identify, and declare a date by which India would be willing to stop production of fissile material for nuclear weapons unilaterally or pursuant to a multilateral moratorium or treaty;
- 5) a description of the steps India is taking to prevent the spread of nuclear-related technology, including enrichment and reprocessing technology or materials that can be used to acquire nuclear weapons technology, as well as the support that India is providing to the U.S. to restrict the spread of such technology;
- 6) a description of the steps that India is taking to secure materials and technology applicable for the development, acquisition, or manufacture of weapons of mass destruction and the means to deliver such weapons through the application of comprehensive export control legislation and regula-

- tions, and through harmonization and adherence to MTCR, NSG, Australia Group, and Wassenaar guidelines, as well as United Nations Security Council Resolution 1540, and participation in the Proliferation Security Initiative;
- 7) a description of the NSG decision regarding India, including whether the U.S.-India civil nuclear cooperation agreement is consistent with the decision, practices, and policies of the NSG;
  - 8) a description of the scope of peaceful cooperation envisioned by the U.S. and India that will be implemented under the Agreement for Nuclear Cooperation, including whether such cooperation will include the provision of enrichment and reprocessing technology; and
  - 9) a description of the steps taken to ensure that U.S. nuclear assistance will not directly or indirectly assist India's nuclear weapons program, including the use of any U.S. equipment, technology, or nuclear material by India in an unsafeguarded nuclear facility or nuclear-weapons related complex; the replication and subsequent use of any U.S. technology in an unsafeguarded nuclear facility or unsafeguarded nuclear weapons-related complex, or for any activity related to the research, development, testing, or manufacture of nuclear explosive devices; and the provision of nuclear fuel in such a manner as to facilitate the increased production of highly-enriched uranium or plutonium in unsafeguarded nuclear facilities.

The Committee notes that several members expressed concern about the possibility that the provision of nuclear technology and nuclear fuel supplies to India could indirectly assist or encourage India's nuclear weapons program. To foreclose this possibility and to increase confidence that no such developments will take place, the bill includes the reporting requirement in subsection (c) (9). The report should address the potential replication of U.S.-origin nuclear technology in unsafeguarded nuclear facilities in India, as well as address the possible utilization of foreign nuclear fuel supplies in such a manner that leads to the increased production of fissile material in India's unsafeguarded nuclear facilities using domestic uranium reserves. Further, the Committee notes with concern India's reported plans for building a third dedicated military production reactor in the near future to replace the CIRUS reactor scheduled for shutdown in 2010 and urges the Administration to encourage India to exercise the utmost restraint with respect to its nuclear weapons program.

Subsection (d) provides that:

- 1) nothing in this Act shall be interpreted as permitting any civil nuclear cooperation between the U.S. and India that would in any way assist, encourage, or induce India to manufacture of otherwise acquire nuclear weapons or nuclear explosive devices;
- 2) no item subject to the transfer guidelines of the NSG may be transferred to India if such transfer would violate the guidelines in effect on the date of the transfer;
- 3) exports of nuclear and nuclear-related material, equipment, or technology to India shall be terminated if India makes any materially significant transfer of nuclear or nuclear-re-

- lated material, equipment, or technology that does not conform to NSG guidelines or ballistic missiles or missile-related equipment or technology that does not conform to MTCR guidelines, unless the President determines that cessation of such exports would be seriously prejudicial to the achievement of U.S. nonproliferation objectives or otherwise jeopardize the common defense and security; and
- 4) the President should seek to prevent the transfer to India of nuclear equipment, materials, or technology from other participating governments in the NSG or from any other source, if nuclear transfers to India are restricted pursuant to this Act.

The Committee notes that the legislation includes an important requirement that a U.S.-Indian agreement for nuclear cooperation shall be terminated if India makes any transfer that does not conform with the guidelines of the NSG or MTCR. This is necessary to provide confidence that India is meeting other key obligations outlined in the July 18, 2005, Joint Statement. Failure to conform to these nuclear and missile export control guidelines would represent a failure by India to meet the nonproliferation standards expected of other responsible states. However, waiver authority of this sanction is granted to the President.

The Committee notes that the legislation allows for certain narrow exemptions for India from certain requirements of the Atomic Energy Act, but expects that the Section 123 Agreement for Nuclear Cooperation now being negotiated with the Government of India is otherwise consistent with other Atomic Energy Act requirements. In addition, the Committee notes that it is the well-established policy of the United States not to transfer sensitive nuclear technology, including reprocessing or enrichment technology, to any state. As President Bush said in February 2004, "enrichment and reprocessing are not necessary for nations seeking to harness nuclear energy for peaceful purposes." Moreover, in answers to questions for the record posed by Senator Lugar on April 5, 2006, the Administration responded that "Transfers to India would still have to meet all the other requirements of NSG Guidelines, including . . . Restraint in transferring to India sensitive facilities, technology and material usable for nuclear weapons or other nuclear explosive devices (including enrichment or reprocessing facilities, equipment or technology." The Administration also responded in another question for the record posed by Senator Lugar that:

"We have also indicated to our NSG partners that we do not intend to transfer enrichment or reprocessing technologies. Our bilateral agreement will not permit such transfers to be made under it."

The Committee finds that no part of this legislation should be interpreted to allow for any exception to this policy.

As stated above, the Committee believes the NPT is the keystone of U.S. nonproliferation policy and must be sustained and strengthened. The United States has always abided by its obligation under Article I of the NPT to not in any way assist, encourage, or induce non-nuclear weapon states to manufacture or otherwise acquire nuclear weapons or nuclear explosive devices. The Nuclear Nonproliferation Act of 1978 set a standard almost thirty years ago for

the United States in its civil nuclear cooperation with non-nuclear weapon states by requiring those states to have full-scope safeguards. In making an exception for a future nuclear cooperation agreement with India in this bill, it is paramount to ensure that nothing in our cooperation would undermine our commitment to abide by Article I of the NPT. Subsection 4 (d)(1) underscores this view held by the Committee.

Subsection 4(d)(2) is one of several provisions in the bill intended to ensure that any civil nuclear cooperation between the United States and India strengthens rather than weakens the global nuclear nonproliferation regime. This provision contributes to the achievement of this objective by prohibiting the transfer to India of any item the transfer of which is subject to (1) the U.S.-India Agreement for Cooperation, (2) the Guidelines for Nuclear Transfers (INFCIRC/254, Part 1) of the Nuclear Suppliers Group (NSG), or (3) the Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Materials, Software and Related Technology (INFCIRC/254, Part 2) of the NSG, if such transfer would violate, or otherwise be inconsistent with, either of the aforementioned transfer guidelines of the NSG as in effect on the date of the transfer. No waiver authority is provided to permit transfers to be made notwithstanding this restriction.

This restriction will ensure that U.S.-India nuclear cooperation continues to be carried out in a manner consistent with the transfer guidelines and policies of the NSG. The Administration has expressed confidence that the NSG will adjust its guidelines in order to permit civil nuclear cooperation along the lines contemplated by the July 18, 2005, Joint Statement of President Bush and Prime Minister Singh. Further, Secretary of State Condoleezza Rice has publicly assured Congress, by means of a letter dated June 28, 2006, to Senate Foreign Relations Committee Chairman Richard Lugar, that:

. . . in carrying out the laws and regulations of the United States governing the export of nuclear-related items, the United States Government will continue to act in accordance with IAEA INFCIRC/254, as amended, the Guidelines and Annexes of the Nuclear Suppliers Group. The U.S. will also continue to act within the policies and practices of the decisions taken by the Nuclear Suppliers Group with respect to India. We intend to do so notwithstanding any contrary actions by any other participating countries in the Nuclear Suppliers Group.

Implicit in both the policy assurances provided to Congress by Secretary Rice and the restrictions of section 4(d)(2) is the risk that the United States will be unable to fully implement the vision of U.S.-India civil nuclear cooperation set forth in the July 18, 2005, Joint Statement of President Bush and Prime Minister Singh to the degree that the NSG fails to adjust its guidelines to permit implementation of that vision. This would be a most regrettable outcome, but preferable to one in which NSG transfer guidelines were ignored or violated and fell into disuse. Both the Administration and the Congress recognize that the NSG transfer guidelines are a critically important element of the global nuclear nonproliferation regime, and as such, the United States has an overriding national interest in ensuring the preservation and continued vitality of

those guidelines. The object of section 4(d)(2) is to embed this principle into U.S. law.

Subsection 4(d)(3) reflects the importance the Committee attaches to the commitments India has undertaken in the July 18, 2005 Joint Statement wherein India agreed to secure its nuclear materials and technology through comprehensive export control legislation and through harmonization and adherence to MTCR and NSG guidelines. These two steps are critical to bringing India closer to the nonproliferation mainstream, one of the benefits attributed to U.S. nuclear cooperation with India by the Administration. Moreover, failure to conform with these nuclear and missile export control guidelines would represent a failure by India to meet the nonproliferation standards expected of other responsible states.

Acknowledging that no export control system is perfect, the Committee has made the threshold of violation one of material significance, and provided the President with the authority to waive termination of exports if he finds that such a termination would be seriously prejudicial to achieving U.S. nonproliferation objectives or otherwise jeopardize the common defense and security. The Committee believes that the threshold for the waiver, given its expectation that India will prove to be a valuable partner in the nonproliferation regime, is a reasonable standard to meet.

Section 4(d)(4) provides that, in the event that U.S. exports must be terminated to India, the President should seek to prevent the transfer to India of nuclear equipment, material or technology from other sources. This bill makes clear that if the President finds that India engaged in activities that would result in termination of nuclear exports under Section 129 (e.g., a nuclear test explosion, termination or abrogation of IAEA safeguards, material violation of IAEA safeguards or an agreement of cooperation with the United States, assistance or encouragement of a non-nuclear weapon state in nuclear-weapons related activities, or reprocessing-related activities) or if India does not uphold its July 18, 2005 Joint Statement commitments, U.S. nuclear assistance could be jeopardized.

The Committee notes with concern the statements made by the Indian Prime Minister to the Indian Parliament on March 6, 2006, that the U.S. Government has said it will take steps that include:

- 1) incorporating assurances regarding fuel supply in a bilateral Indo-U.S. agreement on peaceful uses of nuclear energy which would be negotiated;
- 2) joining India in seeking to negotiate with the IAEA an India-specific fuel supply agreement; and
- 3) supporting an Indian effort to develop a strategic reserve of nuclear fuel to guard against any disruption of supply over the lifetime of India's reactors.

In addition, if, despite these arrangements, a disruption of fuel supplies to India occurs, the U.S. will, with India, jointly convene a group of friendly supplier countries, such as Russia, France and the United Kingdom, to pursue such measures as would restore fuel supply to India. The Committee has been assured that such assurance of supply arrangements that the U.S. is party to will only be concerned with disruption of supply of fuel due to market failures or other reasons, and not due to Indian actions that are inconsistent with the July 18, 2005 commitments, such as a nuclear explosive test.

Subsection (e) provides that a U.S.-India civil nuclear cooperation agreement may only become effective if: 1) the President submits to Congress the agreement reached between the United States and India, including a copy of the safeguards agreement entered into between the IAEA and India relating to India's civil nuclear facilities, in accordance with the requirements and procedures of section 123 of the AEA that are otherwise not inconsistent with the provisions of this Act, and 2) the agreement is approved by a joint resolution that is enacted into law. In addition, the President is urged to consult with the House International Relations Committee and the Senate Foreign Relations Committee each month after the enactment of this Act on the status of the negotiations regarding the civil nuclear cooperation agreement and the negotiations between the IAEA and India regarding the safeguards agreement.

The Committee believes that the existing statutory congressional oversight provided in Section 123 of the Atomic Energy Act is necessary to achieve balance between the executive and legislative branches in undertaking significant nuclear cooperation and therefore retains the approval procedures in those sections of law, in contrast to the Administration's proposed legislation (H.R. 4974). This subsection makes clear that the special procedures in this Act only apply to a U.S.-India Nuclear Cooperation Agreement under section 123 of the AEA that meets all the requirements of that section other than 123 a. (2). If the final agreement does not fulfill other requirements in that section, then subsection (e) has not been complied with and the expedited procedures provided for in this section shall not apply to such an agreement. However, in that case, the President may follow the path in existing law and submit the agreement under the procedures of Atomic Energy Act for agreements that do not meet such requirements, as provided in subsection (m). It is the Committee's understanding and its intent that the procedures under this Act that are used to approve a U.S.-India nuclear cooperation agreement will not be available for use for any future amendment of such an agreement.

Subsection (f) prescribes the form of the joint resolution to approve the U.S.-India Nuclear Cooperation Agreement as a simple resolution without a preamble.

Subsection (g) provides that the resolution will be introduced by the House and Senate majority and minority leaders or their designees and will be referred to this Committee and the Senate Foreign Relations Committee.

Subsection (h) provides that if the joint resolution described in subsection (g) has not been reported by the relevant committee at the end of 60 legislative days beginning on the date of its introduction or the date of the submission of the nonproliferation statement required by section 123 of the Atomic Energy Act of 1954, whichever is later, such committee shall be discharged from further consideration of the joint resolution.

Subsection (i) provides for expedited consideration of any such legislation by the House. Paragraph (1) provides that on the third calendar day after the relevant Committee has reported out the joint resolution or after 60 legislative days has passed since the introduction and referral of the joint resolution described in subsection (g), any member of the House may make a privileged motion to proceed to the joint resolution.

Paragraph (2) of subsection (i) provides that debate on the resolution shall be limited to six hours equally divided between proponents and opponents, and during debate the joint resolution shall not be amendable.

Paragraph (3) of subsection (i) provides that appeals from the decisions of the Chair shall be decided without debate.

Subsection (j) provides that floor consideration of the joint resolution by the Senate shall be in accordance with section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

Subsection (k) provides the procedure in the event that one House acts prior to the other. In both cases, the final vote of the House in prior receipt of the joint resolution from the other House shall be considered to be a vote on joint resolution of the other House. This subsection ensures that once voted on by one House, the vote in the second House will immediately send the resolution to the President.

Subsection (l) provides that the 60 legislative days referred to in subsection (h) shall exclude days on which either House is not in session because of an adjournment of more than three days.

Subsection (m) provides that the procedures described in this Act do not preclude approval of an India agreement on the unmodified provisions of section 123 of the Atomic Energy Act. This provision is intended to ensure that notwithstanding the conditionality described in subsection (e)(1), the President may determine that he cannot meet the procedures of this section (because, for example, he cannot meet a number of requirements of section 123 a. of such Act) and will use instead the procedures prescribed in the existing Atomic Energy Act.

Subsection (n) provides that the procedures of this section shall cease to be effective upon the enactment of a joint resolution under this section. No other agreement or amendment of an agreement shall be subject to the waiver and the expedited procedures described in this joint resolution. Such agreements or amendments will have to follow the requirements of the existing Atomic Energy Act.

The Committee decided to reject the Administration's proposed method of Congressional consideration of a negotiated agreement as intending to effectively remove Congress from any substantive role. Given the unique and controversial nature of the proposed civil nuclear cooperation agreement and the fact that Congress was not consulted regarding the negotiations between the Administration and the Indian government relating to the original announcement of their intention to negotiate such an agreement, Congressional scrutiny and approval was deemed essential to protect U.S. interests. Careful and extensive consideration was accorded by Committee members and staff to various methods by which that process could best occur, with a consensus agreeing to require passage of a joint resolution of approval by both the House and Senate to permit the agreement to take effect. Although there was considerable support for allowing amendments to the resolution, it was decided that this possibility would render the negotiation of an agreement of such complexity effectively impossible.

Direct Congressional involvement, especially the requirement for its approval, is also necessary to ensure that the pledges and assur-

ances made by the Administration and the Indian government are actually met and not rendered irrelevant through lack of action or discontinuation of interest. Without enforcement provisions, such statements are obviously little more than promises that may be modified at will, or even abandoned altogether, should circumstances change.

Although the President plays a key role in the formulation and implementation of foreign policy, the Constitution nevertheless vests Congress with considerable powers and responsibilities in the areas of foreign policy and national security, which its Members are obligated to carry out. Fidelity to that trust means that Congress cannot delegate those responsibilities to the executive branch or allow itself to be made irrelevant to government policy in any area. The Committee believes this legislation reestablishes the proper balance between the two branches regarding the U.S. entering into substantive agreements with other countries and also reinforces the shared authority and mutual respect necessary to advance the security and interests of the American people.

Subsection (o), Paragraph (1), provides that the President submit a report no later than January 31, 2007, and every year thereafter on the extent to which the policy objectives in section 3(b) have been achieved, the steps taken by the U.S. and India in the preceding calendar year to accomplish those objectives, the extent of cooperation by other countries in achieving those objectives, and the steps the U.S. will take in the current calendar year to accomplish those objectives.

Paragraph (2) provides that no later than one year after the agreement for nuclear cooperation takes effect, and every year thereafter, the President submit a report describing U.S. nuclear exports to India in the preceding year and the anticipated exports in the next year. This report shall include, (in a classified form if necessary), an estimate for the previous year of the amount of uranium mined in India, the amount that has likely been used of allocated for the production of nuclear explosive devices, the rate of production of nuclear explosive devices and of fissile material for those devices, and an analysis as to whether imported uranium has affected such rate of production of these devices. In addition, the report shall include: a description of whether U.S. civil nuclear assistance to India is in any way assisting India's nuclear weapons program, including the use of equipment, technology, or nuclear material in an unsafeguarded nuclear facility; the replication and use of U.S. technology in an unsafeguarded nuclear facility or for any activity related to the research, development, testing, or manufacture of nuclear explosive devices; and the provision of nuclear fuel in such a manner as to facilitate the production of highly-enriched uranium or plutonium in unsafeguarded facilities. This reporting requirement is designed to determine whether any natural uranium, nuclear fuel or nuclear technology provided by the United States or other countries has led to the ability of India to increase its ability to produce fissile material for its nuclear weapons program. While India undoubtedly will make its own judgments regarding its national security interests, the international community should try to ensure that peaceful civil cooperation with India does not result in an increase in its nuclear arsenal.

Paragraph (3) provides that one year after this agreement has been enacted and every year thereafter the President shall submit a report describing any new nuclear reactors of nuclear facilities that the Government of India has designated as civilian and placed under inspections or has designated as military.

Paragraph (4) provides that one year after this agreement has been enacted and every year thereafter the President shall submit a report describing the disposal of spent nuclear fuel from India's civilian nuclear program.

Subsection (p) provides definitions used in this Act.

#### AGENCY VIEWS

At the time the report was filed, no formal views were available.

#### NEW ADVISORY COMMITTEES

H.R. 5682 does not establish or authorize any new advisory committees.

#### CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 5682 does not apply to the legislative branch

#### FEDERAL MANDATES

H.R. 5682 provides no Federal mandates.



#### ADDITIONAL VIEWS

H.R. 5682 is far from perfect, but it is a substantial improvement over the Administration's legislative proposal.

Most importantly, this legislation ensures that Congress must approve a nuclear cooperation agreement with India by an affirmative majority vote and requires that the Administration provide copies of the cooperation agreement and the safeguards agreement negotiated between India and the International Atomic Energy Agency (IAEA) before we take that vote.

My strong preference was to give Congress the ability to amend the cooperation agreement, but that proved to be incompatible with the expedited procedures this bill establishes for Congressional consideration of the agreement.

Also on the positive side, this bill precludes the President from waiving some very important provisions in the Atomic Energy Act that place conditions on India's handling of nuclear materials received from the United States and provides for the termination of nuclear cooperation in the event that India resumes nuclear testing, violates its IAEA safeguards agreement, or violates the terms of our bilateral nuclear cooperation agreement.

It requires the Nuclear Suppliers Group (NSG) to approve an exemption for India before Congress votes on the cooperation agreement. The NSG decision must be made by consensus, the standard practice for that organization.

It directs the President to take steps to prevent other countries from making nuclear transfers to India if India takes certain actions, such as testing a nuclear weapon or violating IAEA safeguards, that lead to a termination of U.S. nuclear exports.

And finally, the bill includes language I proposed prohibiting nuclear transfers to India if, after having agreed to adhere to NSG and Missile Technology Control Regime (MTCR) guidelines, India exports items to other countries that violate those guidelines.

Nevertheless, despite the inclusion of the aforementioned provisions, H.R. 5682 has some serious deficiencies. Most importantly, it does nothing to limit India's production of fissile material for nuclear weapons.

I accept the fact that India has nuclear weapons and will not sign the Nuclear Non-Proliferation Treaty (NPT). Nevertheless, I believe there is great value in restraining India's ability to produce additional plutonium and highly enriched uranium. Let me cite three reasons.

First, if we are going to change the internationally accepted rules on nuclear trade for one country—rules that the United States, more than any other nation, is responsible for putting in place—then I believe we need a compelling nonproliferation “gain” to justify those changes.

India's other nonproliferation commitments in the context of this nuclear deal—applying stringent export controls, adhering to NSG and MTCR guidelines, accepting IAEA safeguards on civilian facilities, among others—are positive steps in the right direction. But they are, for the most part, either a reflection of India's existing policies or largely symbolic. In my view, only a halt on fissile material production would make this deal “a net plus for nonproliferation.”

The second argument for requiring India to stop producing fissile material is the impact this agreement could have on India's neighbors.

The vast majority of nonproliferation experts—both Republicans and Democrats—believe this agreement will enable India to increase its production of fissile material. Why? Because India now faces a shortage of domestic uranium and is forced to make a choice between generating electricity and making bombs.

If and when the NSG decides to make an exemption for India and Congress approves the nuclear cooperation agreement, then India will be able to purchase uranium and other types of reactor fuel on the international market and will no longer face this dilemma. From that point on, India will be free to devote all of its domestic uranium supply to its weapons programs, if it so chooses.

American nonproliferation experts are not the only ones making this argument. Some of their Indian counterparts are saying exactly the same thing. For example, in an article recently published in the *New Delhi Indian Defense Review*, a former high-level official in India's intelligence service argues that this deal will allow India to produce about 50 bombs a year—a significant increase over current estimates.

This is not to say that India will immediately begin a massive buildup of nuclear arms. But it will have the capability to do so. And that is a critical point for China and Pakistan, which will inevitably make their own strategic decisions based on worst-case assessments of India's arsenal.

In other words, many experts believe this deal will likely lead Pakistan—and possibly China—to build more of their own nuclear weapons.

With all due respect to President Musharraf, the last thing any of us should want is a Pakistan with even more fissile material and nuclear weapons than it already has. Nowhere else in the world is there a greater risk of radical Islamist terrorists getting their hands on weapons of mass destruction.

A third argument for limiting the production of fissile material is India's commitment in the July 18, 2005 Bush-Singh joint statement to “assume the practices and responsibilities” of other advanced nuclear powers.

Four of the five recognized nuclear weapons states—the United States, Great Britain, France, and Russia—have stopped producing fissile material for nuclear weapons as a matter of policy. The fifth, China, is also believed to have halted production. It is hard to think of a more important “practice” for India to assume.

The underlying bill includes language expressing the importance of achieving a moratorium on fissile material production in South

Asia. Unfortunately, this is contained in the “Statements of Policy” section, which is essentially meaningless from a legal standpoint.

Another provision in the bill requires the President to determine that “India is working actively with the United States for the conclusion of a multilateral Fissile Material Cutoff Treaty” (FMCT). This sounds good on the surface, but in many ways this too is largely devoid of meaning.

The U.S. recently introduced a draft FMCT at the Conference on Disarmament in Geneva. This draft did not include a verification mechanism because the Administration’s view is that such a treaty is inherently unverifiable. The Indian position, on the other hand, is that an FMCT must include a verification mechanism.

Given that our two governments have diametrically opposed views regarding verification issues, it isn’t clear to me that the Indian commitment to work with us for the conclusion of such a treaty has much practical value.

At the Committee markup of H.R. 5682, I offered two amendments designed to limit India’s production of fissile material for nuclear weapons. Regrettably, both of them were voted down.

The first amendment would have required the President to determine that India had halted the production of fissile material before he would be permitted to waive key provisions in the Atomic Energy Act and submit a nuclear cooperation agreement to Congress.

India could meet this requirement in three different ways. First, it could declare a unilateral moratorium on the production of fissile material. Second, it could adhere to a multilateral moratorium, together with China and Pakistan (and possibly other countries). Or third, it could sign and adhere to a multilateral FMCT, if and when such a treaty is concluded.

The second amendment was based on a proposal made by former Senator Sam Nunn, one of our nation’s most respected voices on nonproliferation issues. It would have allowed exports of nuclear reactors, components, and other technology to India as soon as the conditions in H.R. 5682 were met. But it also would have restricted transfers of uranium and other types of nuclear reactor fuel until the President determined that India had stopped the production of fissile material.

In considering these amendments and other critical issues related to the nuclear deal which have been negotiated with little or no input from, or consultation with, Congress, I would suggest that the most important question one should ask is not whether these are perceived as “deal killers” or will be acceptable to the Indian side. Instead, the real test should be whether they are good policy and serve American national security interests. And on both counts, I would argue that they do.

I strongly support efforts to deepen the U.S.-India strategic partnership, and in that context, I welcome civilian nuclear cooperation. But such cooperation must strike the appropriate balance between two compelling U.S. national interests: strengthening our relationship with this growing power and preserving meaningful, internationally-accepted rules on nuclear nonproliferation.

As H.R. 5682 moves through the legislative process, I will continue my efforts to achieve that balance.

HOWARD L. BERMAN.

